THE HON'BLE SRI JUSTICE B. PRAKASH RAO
AND
THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN

WRIT PETITION NO. 12919 OF 2006

Date: 09.08.2006

Between:

Professor (Dr) H N Suresh.

… Petitioner

and

The Union of India, Th: The Secretary, Ministry of Defence, New Delhi-II and another.

… Respondents.

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AND
THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN

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ORDER: (per Hon'ble Sri Justice Ramesh Ranganathan)

Aggrieved by the order of the Central Administrative Tribunal Hyderabad, in O.A.No. 535 of 2005 dated 13.04.2006, whereby the Tribunal refused admission of the O.A, the present writ petition is filed by the unsuccessful applicant.

The petitioner herein, a Professor in the Faculty of Electrical & Mechanical Engineering in the 2nd respondent institution, has been imparting training to Armed Forces Officers to prepare them for obtaining Graduation/Post-graduate degrees in various streams of Engineering & Technology. The order under challenge dated 03.06.2005 are the proceedings whereby a preliminary enquiry was ordered, under Rule 14 of the CCS (CC&A) Rules, 1965, to enquire into the disobedience of orders by the petitioner herein. The preliminary enquiry was instituted to collect necessary facts of the case after affording sufficient opportunity to the petitioner, to record the findings and opinion, and to submit the enquiry proceedings to the office of the 2nd respondent. Even before the petitioner herein, had approached the Tribunal, the preliminary enquiry is said to have been completed. Before the Tribunal, the petitioner herein contended that a preliminary enquiry could not be

conducted under Rule 14 of the CCS (CC&A) Rules 1965.

In their counter-affidavit the respondents herein stated that what was conducted was merely a preliminary enquiry to collect all facts to determine whether disciplinary proceedings should be initiated against the petitioner-applicant for using intemperate language in official correspondence, bypassing the proper channel of correspondence and for refusing to take classes. It is stated that the petitioner, being an employee in a Category "A" Training Institution in the Army under the Ministry of defence, was required to adhere to the organizational norms and rules governing it, that he refused to do so and instead chose to rely on the norms prescribed by the All India Council of Technical Education which norms were not applicable to Defence establishments. It is stated that the petitioner's claim for parity in rank between professional staff and Army officers, on the basis of pay scales, was contrary to the instructions issued by the Director General of EME in its proceedings dated 11.10.1994. It is stated that the petitioner, a Professor under probation, had raised frivolous issues bypassing the normal channel of correspondence in contravention of the Government of India, Ministry of defence office memorandum dated 09.12.1953 and was using derogatory and demeaning language with complete disregard to the basic service norms, of decency and unbecoming of a government officer. The Army Head Quarters had advised commencement of process to initiate disciplinary proceedings against the petitioner and consequently a preliminary enquiry was held on 03.06.2005. While admitting that the President of India is the appointing authority and that the Secretary, Ministry of defence is the disciplinary authority, in respect of the cadre of officers to which the petitioner belonged, it

is stated that the CCS & CCA Rules provide for holding of a preliminary enquiry for the purpose of collection of facts and accordingly a preliminary enquiry was ordered by the officiating Commandant to ascertain whether a *prima facie* case of indiscipline exists against the petitioner and that the petitioner was provided an opportunity to explain the allegations leveled against him. It is stated that a preliminary enquiry, to ascertain the facts about the conduct and work of the petitioner, could be ordered by an officer superior in the chain of command and not necessarily the appropriate disciplinary authority. It is stated that, on completion of preliminary enquiry, the proceedings were submitted to the Directorate General of EME, vide letter dated 27.06.2005, that the Ministry of Defence had concurred and had started the process of initiating disciplinary action against the petitioner and that the MCEME had been directed to serve a show cause notice as a prelude to commencement of disciplinary proceedings against him. The equivalence in rank and status as claimed by the petitioner is denied. It is stated that these matters had been clarified by the Army Head Quarters in its proceedings dated 29.11.2005 after consultation with the Ministry of Defence, and that a preliminary enquiry to ascertain facts could not be equated to an enquiry held in the course of taking disciplinary action against an employee.

The Tribunal agreed with the petitioner's contention that no preliminary enquiry could be conducted under Rule 14 of the CCS(CC&A) Rules 1965 but held that a preliminary enquiry was, otherwise, permissible under the CCS(CC&A) Rules, 1965 in order to satisfy itself as to whether any disciplinary proceedings are required to be initiated, that such a preliminary enquiry was

conducted to find out the facts and as to whether any action was required to be taken on the misconduct or allegations made. The Tribunal held that it was unnecessary that the officer concerned, against whom the said preliminary enquiry was conducted, should be asked to participate in the matter and, even, if the authorities had sent him a notice, the officer did not need to participate in such an enquiry. On the basis of the records placed before it, the Tribunal held that the exercise carried out by the respondent was to conduct a preliminary enquiry, into the allegations made, in order to come to a conclusion whether disciplinary action was required to be initiated or not, that reference to Rule 14 of the CCS(CC&A) Rules, 1965 in the impugned order had to be ignored and nothing would turn on this aspect in the facts and circumstances of the case and since the enquiry had already been completed, the respondents were free to take further steps on the said enquiry report in accordance with law. The Tribunal declined to admit the O.A.

Captain K.M. Saxena, learned Counsel for the petitioner, would contend before this Court that, since the appointing authority, for the cadre to which the petitioner belonged, is the President of India and the disciplinary authority is the Ministry of defence, disciplinary action against the petitioner could only be taken, by the disciplinary authority or by a person authorized by it and that the 2nd respondent had no authority to conduct any enquiry much less a preliminary enquiry against the petitioner herein. Learned Counsel would submit that the post held by the petitioner was equivalent in rank to that of a Major General and that the 2nd respondent, who was lower in rank than him, was not

entitled to enquire into the conduct of the petitioner, an officer higher in rank than the 2nd respondent. Learned Counsel would contend that since Rule 14 does not, admittedly, provide for conducting a preliminary enquiry, holding of a preliminary enquiry under Rule 14 of the CCS(CC&A) Rules 1965 is a*b initio* void and no disciplinary action could be taken pursuant thereto. Learned Counsel would reply on **Chimanlal Shah Vs. Union of India**[1] and **L.D.C. Yashwant Singh Vs. Union of India**[2].

The learned Assistant Solicitor General, on the other hand, would submit that no prejudice can be said to have been caused to the petitioner on account of a preliminary enquiry being held to collect facts, that mere absence of a specific provision in this regard would not disentitle the authorities to conduct a fact finding enquiry and since such a preliminary enquiry, held merely to ascertain and collect facts, does not even amount to initiation of disciplinary proceedings against the petitioner and no prejudice has been caused to him thereby, the Tribunal had rightly rejected the challenge to the validity of such a preliminary enquiry. He would rely on **Rt. Rev. B.P. Sugandhar Bishop Vs. D. Dorothy Dayasheela Ebeneser**[3].

The main purpose of holding a preliminary enquiry is to gather facts. If the preliminary enquiry report is relied upon, during the course of a disciplinary enquiry, a copy thereof is required to be furnished to the delinquent employee. If, however, no reliance is placed on the preliminary enquiry report while taking disciplinary action against the delinquent employee, failure to supply a copy of the preliminary enquiry report is of no consequence. A

preliminary enquiry is a prelude to initiation of disciplinary action. Unless the statutory rules or the rules made under the proviso to Article 309 of the Constitution of India so require, it is not necessary that the appointing authority/disciplinary authority, alone, initiates disciplinary action against the delinquent employee. Any authority who is higher in rank than the delinquent, and who can be said to be his controlling authority can initiate disciplinary action. (**P.V. Srinivasasastry Vs. Controller and Auditor General**[4]). A preliminary enquiry, as stated above, is held even before disciplinary action is initiated and since holding of a preliminary enquiry does not even amount to initiation of disciplinary proceedings and is merely an exercise to gather information on a particular issue, such a preliminary enquiry need not be held only by or at the behest of the disciplinary authority. No prejudice can be said to have been caused to the petitioner herein on account of a preliminary enquiry being held against him. A fact finding enquiry, which does not amount to a disciplinary enquiry, is not prohibited under the CCS (CC&A) Rules. The mere fact that Rule 14 of the CCS(CC&A) Rules 1965 was erroneously referred to as the source of power to hold such a preliminary enquiry would not render such fact finding exercise void.

In **Champaklal Chimanlal Shah**[1], the Supreme Court observed:-

".....But even where it is intended to take action by way of punishment what usually happens is that something in the nature of what may be called a preliminary enquiry is first held in connection with the alleged misconduct or unsatisfactory work. In this preliminary enquiry the explanation of the government servant may be taken and documentary and even oral evidence may be considered. It is usual when such a preliminary enquiry makes out a prima facie case against

the servant concerned that charges are then framed against him and he is asked to show cause why disciplinary action be not taken against him. An enquiry officer (who may be himself in the case where the appointing authority is other than the Govern-ment) is appointed who holds enquiry into the charges communicated to the servant concerned after taking his explanation and this enquiry is held in accordance with the principles of natural justice. This is what is known as a formal departmental enquiry into the conduct of a public servant. In this enquiry evidence both documentary and oral may be led against the public servant concerned and he has a right to cross-examine the witnesses tendered against him. He has also the right to give documentary and oral evidence in his defence, if he thinks necessary to do so. After the enquiry is over, the enquiry officer makes a report to the Government or the authority having power to take action against the servant concerned. The government or the authority makes up its mind on the enquiry report as to whether the charges have been proved or not and if it holds that some or all the charges have been proved, it determines a tentatively the punishment, to be, inflicted on the public servant concerned. It then communicates a copy of the enquiry officer's report and its own conclusion thereon and ask him to show cause why the tentative punishment decided upon be, not inflicted upon him. This procedure is required by Article 311(2)of the Constitution in the case of the three major punishments i.e. dismissal, or removal or reduction in rank. The servant, concerned has then an opportunity of showing case by making a representation that the conclusions arrived at the departmental enquiry are incorrect and in any case the punishment proposed to be inflicted is too harsh.

Generally therefore a preliminary enquiry is usually held to determine whether a prima facie case for a formal departmental enquiry is made out, and it is very necessary that the two should not be confused. Even where government does not intend to take action by way of punishment against a temporary servant on a report of bad work or misconduct a preliminary enquiry is usually held to satisfy government that there is reason to dispense with the services of a temporary employee or to revert him to his substantive post, for as we have said already government does not usually take action of this kind without any reason. **Therefore when a preliminary enquiry of this nature is held in the case of a temporary employee or a government servant holding a higher rank temporarily it must not be confused with the regular departmental enquiry (which usually follows such a preliminary enquiry) when the government decides to frame charges and get a departmental enquiry made in order that one of the three major punishments already indicated may be inflicted on the government servant.** Therefore, so far as the preliminary enquiry is concerned there is no question of its being governed by Article 311(2) for that enquiry is really for the satisfaction of government to decide whether punitive action should be taken or action should be taken under the contract or the rules in the case of a temporary government servant or a servant holding higher rank temporarily to which he has no right. **In short a preliminary enquiry is for the purpose of collection of facts in regard to the conduct and work of a government**

servant in which he may or may not be associated so that the authority concerned may decide whether or not to subject the servant concerned to the enquiry necessary under Article 311 for inflicting one of the three major punishments mentioned therein. Such a preliminary enquiry may even be held ex parte, for it is merely for the satisfaction of government, though usually for the sake of fairness, explanation is taken from the servant concerned even as such an enquiry. But at that stage he has no right to be heard for the enquiry is merely for the satisfaction of the government and it is only when the government decides to hold a regular departmental enquiry for the purpose of inflicting one of the three major punishments that the government servant gets the protection of Article 311 and all the rights that that protection implies as already indicated above. There must therefore be no confusion between the two enquiries and it is only when the government proceeds to hold a departmental enquiry for the purpose of inflicting on the government servant one of the three major punishments indicated in Article 311 that the government servant is entitled to the protection of that Article……" (emphasis supplied).

I n **B.P. Sugandhar Bishop in Medak**[3], the Supreme Court held:-

"……..**We find it difficult to appreciate how the Division Bench thought it fit to quash the preliminary enquiry particularly when the appellant had made it clear, by the time the Division Bench disposed of the appeal, that the formal enquiry was yet to be held. Obviously, the purpose of constituting the Commission of Enquiry was to hold only a preliminary enquiry to ascertain whether there was some truth in the complaints made against Respondent 1 and whether there was enough material on the basis of which misconduct of Respondent 1 could be proved. The learned Judges failed to appreciate that at that stage no formal charge was required to be framed nor even participation by Respondent 1 was necessary. The Executive Committee had only broadly indicated to the Commission of Enquiry the nature and scope of the enquiry which they had to make and a copy of the terms of reference was served upon Respondent 1 only to enable her to put forward her explanation so that that also could be considered along with the report of the Commission of Enquiry before taking a decision as to whether a full-fledged regular enquiry was required to be made against her. There was hardly any role for the court to play at that stage.** The learned Single Judge had rightly dismissed the writ petition as premature and it was not proper for the Division Bench to set aside that order and quash the constitution of the Commission of Enquiry and holding of a preliminary enquiry. It should have been appreciated that it was futile to pass such an order as the Executive Committee had already taken a decision by that time to hold a regular full-fledged enquiry and appointed an Inquiry Officer for that purpose……."(emphasis supplied).

In **LDC Yashwant Singh**[2], the question which arose for consideration was as to whether an enquiry could be held against a civilian officer, to whom the CCS(CC&A) Rules 1965 were applicable, by an Army Officer. This Court held that since the petitioner therein was governed by the CCS(CC&A) Rules 1965 the enquiry had to be conducted in accordance with the procedure prescribed under the Rules and since there was no reference in the impugned notice that the enquiry was being conducted under the CCS(CC&A) Rules 1965 and as the enquiry officer was an officer of the Army, the show cause notice was liable to be quashed. This Court granted liberty to the authorities concerned to proceed with the enquiry against the petitioner therein as per the procedure prescribed under the CCS(CC&A) Rules 1965.

As a preliminary enquiry is merely a fact finding exercise, no prejudice can be said to have been caused to the petitioner nor would it amount to initiation of disciplinary action against him. It is, therefore, wholly unnecessary for us to examine his contention as to whether the post held by him is equivalent in rank to that of a Major General. The exercise of holding a preliminary enquiry cannot be equated to that of a departmental enquiry. While failure to comply with the mandatory provisions of the CCS(CC&A) Rules 1965, while conducting a regular departmental enquiry, may render the punishment imposed on a delinquent employee illegal, holding of a preliminary enquiry, on the other hand, being a mere fact finding exercise, would not result in any prejudice being caused and such exercise of administrative discretion does not, normally, call for interference in proceedings under Article 226 of the Constitution of India. The order of the Tribunal in refusing to admit the O.A. does not call for interference.

The writ petition is dismissed. However, in the circumstances, without costs.

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B. PRAKASH RAO, J

Date: -08-2006

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RAMESH RANGANATHAN, J

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[1] 1964(5) SCR 190

[2] 2005(1 ALD 53

[3] 1996(4) SCC 406

[4] (1993) 1 SCC 419